

PDC Interpretation

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REFERENCES: RCW 42.17.020(28) APPROVED BY: The Commission
RCW 42.17.100
RCW 42.17.103

SEE ALSO:

Computing Thresholds for Independent Expenditures

Intent: To provide guidance to persons who make independent expenditures regarding when the expenditures need to be reported on a C6 form and when the “notice to voters” and “top five contributor” information must be included as part of the advertising.

Discussion of Issue: On October 2, 2002, the Commission approved PDC Interpretation 02-02, Filing a Report of Independent Expenditures That Support or Oppose More Than One Candidate or Ballot Measure. That interpretation implemented RCW 42.17.100 and determined that a C6 report disclosing independent expenditures is required when the pro-rata cost attributed to one candidate or ballot measure featured in the ad is \$100 or more. If that threshold is reached or surpassed, the entire cost of the advertisement must be reported, including the amounts attributed to other candidates and ballot measures benefited by the ad.

That interpretation addressed a specific question: Is reporting required when at least \$100 is spent on independent advertising regardless of how many candidates or ballot measures are featured, or must the portion of the ad devoted to one candidate or ballot measure cost at least \$100? The Commission opted for the latter option.

However, there are two other issues related to independent expenditures that were not brought to the Commission’s attention in 2002 and that are not directly addressed by Interpretation 02-02:

1. RCW 42.17.103 requires special 24-hour reporting of independent expenditures supporting or opposing a candidate or ballot measure with a fair market value of \$1,000 or more if the expenditures are presented to the public within 21 days of an election. If such an independent expenditure supported or opposed more than one candidate or ballot measure would special reporting only be required when at least \$1,000 per candidate or ballot measure had been spent by the sponsor?

Although Interpretation 02-02 implements RCW 42.17.100, not RCW 42.17.103, both sections of law specify a spending threshold -- \$100 in RCW 42.17.100 and \$1,000 in RCW 42.17.103. Both sections also use comparable language referencing expenditures that support or oppose a candidate or ballot proposition.

2. According to RCW 42.17.020(28), an independent expenditure is an expenditure that has each of the following elements:

(a) It is made in support of or in opposition to a candidate for office by a person who is not (i) a candidate for that office, (ii) an authorized committee of that candidate for that office, (iii) a person who has received the candidate's encouragement or approval to make the expenditure, if the expenditure pays in whole or in part for political advertising supporting that candidate or promoting the defeat of any other candidate or candidates for that office, or (iv) a person with whom the candidate has collaborated for the purpose of making the expenditure, if the expenditure pays in whole or in part for political advertising supporting that candidate or promoting the defeat of any other candidate or candidates for that office;

(b) The expenditure pays in whole or in part for political advertising that either specifically names the candidate supported or opposed, or clearly and beyond any doubt identifies the candidate without using the candidate's name; and

(c) The expenditure, alone or in conjunction with another expenditure or other expenditures of the same person in support of or opposition to that candidate, has a value of \$700 or more. A series of expenditures, each of which is under \$700, constitutes one independent expenditure if their cumulative value is \$700 or more.

(Emphasis added and dollar threshold adjusted for inflation from the original \$500 level.)

One application of the definition of independent expenditures relates to when political committees making such expenditures have to include a special "notice to voters" and identify their top five contributors as part of the ad.

Again, the question has arisen about whether this \$700 is a per candidate amount or an aggregate total for all candidates supported or opposed in an ad. To date, it has been answered consistent with Interpretation 02-02, even though that interpretation formally implements a different section of law.

More recently, another question has come up regarding whether, in determining when the \$700 threshold has been reached, one only includes the cost of that portion of an ad that supports a candidate. Or, would one also consider the ad costs associated with opposing that candidate's opponent. Interpretation 02-02 does not address this question. As indicated by the example given in that interpretation, the decision reached was based on all of the candidates or ballot measures being supported by the ad.

Attached for reference are a copy of Interpretation 02-02, RCW 42.17.100 and RCW 42.17.103.

Interpretation:

For the purposes of RCW 42.17.020(28), RCW 42.17.100, RCW 42.17.103 and RCW 42.17.510(2),(4) & (5):

An independent expenditure that supports or opposes more than one candidate or ballot measure is subject to the applicable reporting and/or sponsor identification requirements referenced above when the pro-rata share of the expenditure attributable to one candidate or ballot proposition equals or exceeds the respective reporting threshold. The pro-rata share includes:

(a) those portions of the expenditure supporting a candidate and opposing that candidate's opponent(s), or

(b) those portions of the expenditure supporting a ballot proposition and opposing a competing ballot proposition.

If a reporting threshold is met or exceeded as described above, the entire independent expenditure shall be reported, including the amounts attributable to all candidates and ballot propositions supported or opposed by the expenditure.

Example 1: If an independent expenditure political ad supporting Candidates A, B and C costs \$300 and 50% of the ad is devoted to Candidate A, the entire expenditure is reportable under RCW 42.17.100.

Example 2: If \$400 of an independent expenditure is attributable to supporting a candidate and \$400 is attributable to opposing that candidate's opponent, that expenditure is reportable under RCW 42.17.100 and, if it is political advertising, it must include the notice and top five contributor information required by RCW 42.17.510(2), (4) or (5) depending upon the medium used.*

Example 3: If an independent expenditure ad presented to the public two weeks before the election costs \$1,000 and 50% of it supports a candidate and 50% opposes that candidate's opponent, the ad is reportable under RCW 42.17.103 and must include the notice and top five contributor information required by RCW 42.17.510(2), (4) or (5) depending upon the medium used.*

Example 4: If an independent expenditure ad that is mailed two weeks before the election costs \$1,000 and 50% of it supports Candidate A and 50% supports Candidate B, it is reportable under RCW 42.17.100, but not RCW 42.17.103, unless it is part of series of ads being distributed during the three weeks before the election. In addition, this single ad is not subject to RCW 42.17.510(2), (4) or (5), again unless it is part of a series of ads and the per candidate threshold in RCW 42.17.020(28) as adjusted by WAC 390-05-400 is met or exceeded.

* RCW 42.17.510(2) applies to flyers, brochures, billboards and other written ads. Section .510(4) applies to television and movie screen ads (because the medium includes a visual image). Section .510(5) applies to radio and telephone ads.

RCW 42.17.100**Special reports — Independent expenditures.**

(1) For the purposes of this section and RCW 42.17.550 the term "independent expenditure" means any expenditure that is made in support of or in opposition to any candidate or ballot proposition and is not otherwise required to be reported pursuant to RCW 42.17.060, 42.17.080, or 42.17.090. "Independent expenditure" does not include: An internal political communication primarily limited to the contributors to a political party organization or political action committee, or the officers, management staff, and stockholders of a corporation or similar enterprise, or the members of a labor organization or other membership organization; or the rendering of personal services of the sort commonly performed by volunteer campaign workers, or incidental expenses personally incurred by volunteer campaign workers not in excess of fifty dollars personally paid for by the worker. "Volunteer services," for the purposes of this section, means services or labor for which the individual is not compensated by any person.

(2) Within five days after the date of making an independent expenditure that by itself or when added to all other such independent expenditures made during the same election campaign by the same person equals one hundred dollars or more, or within five days after the date of making an independent expenditure for which no reasonable estimate of monetary value is practicable, whichever occurs first, the person who made the independent expenditure shall file with the commission and the county elections officer of the county of residence for the candidate supported or opposed by the independent expenditure (or in the case of an expenditure made in support of or in opposition to a local ballot proposition, the county of residence for the person making the expenditure) an initial report of all independent expenditures made during the campaign prior to and including such date.

(3) At the following intervals each person who is required to file an initial report pursuant to subsection (2) of this section shall file with the commission and the county elections officer of the county of residence for the candidate supported or opposed by the independent expenditure (or in the case of an expenditure made in support of or in opposition to a ballot proposition, the county of residence for the person making the expenditure) a further report of the independent expenditures made since the date of the last report:

(a) On the twenty-first day and the seventh day preceding the date on which the election is held; and

(b) On the tenth day of the first month after the election; and

(c) On the tenth day of each month in which no other reports are required to be filed pursuant to this section. However, the further reports required by this subsection (3) shall only be filed if the reporting person has made an independent expenditure since the date of the last previous report filed.

The report filed pursuant to paragraph (a) of this subsection (3) shall be the final report, and upon submitting such final report the duties of the reporting person shall cease, and there shall be no obligation to make any further reports.

(4) All reports filed pursuant to this section shall be certified as correct by the reporting person.

(5) Each report required by subsections (2) and (3) of this section shall disclose for the period beginning at the end of the period for the last previous report filed or, in the case of an initial report, beginning at the time of the first independent expenditure, and ending not more than one business day before the date the report is due:

a) The name and address of the person filing the report;

(b) The name and address of each person to whom an independent expenditure was made in the aggregate amount of more than fifty dollars, and the amount, date, and purpose of each such expenditure. If no reasonable estimate of the monetary value of a particular independent expenditure is practicable, it is sufficient to report instead a precise description of services, property, or rights furnished through the expenditure and where appropriate to attach a copy of the item produced or distributed by the expenditure;

(c) The total sum of all independent expenditures made during the campaign to date; and

(d) Such other information as shall be required by the commission by rule in conformance with the policies and purposes of this chapter.

RCW 42.17.103

Special reports — Political advertising.

(1) The sponsor of political advertising who, within twenty-one days of an election, publishes, mails, or otherwise presents to the public political advertising supporting or opposing a candidate or ballot proposition that qualifies as an independent expenditure with a fair market value of one thousand dollars or more shall deliver, either electronically or in written form, a special report to the commission within twenty-four hours of, or on the first working day after, the date the political advertising is first published, mailed, or otherwise presented to the public.

(2) If a sponsor is required to file a special report under this section, the sponsor shall also deliver to the commission within the delivery period established in subsection (1) of this section a special report for each subsequent independent expenditure of any size supporting or opposing the same candidate who was the subject of the previous independent expenditure, supporting or opposing that candidate's opponent, or supporting or opposing the same ballot proposition that was the subject of the previous independent expenditure.

(3) The special report must include at least:

(a) The name and address of the person making the expenditure;

(b) The name and address of the person to whom the expenditure was made;

(c) A detailed description of the expenditure;

(d) The date the expenditure was made and the date the political advertising was first published or otherwise presented to the public;

(e) The amount of the expenditure;

(f) The name of the candidate supported or opposed by the expenditure, the office being sought by the candidate, and whether the expenditure supports or opposes the candidate; or the name of the ballot proposition supported or opposed by the expenditure and whether the expenditure supports or opposes the ballot proposition; and

(g) Any other information the commission may require by rule.

(4) All persons required to report under RCW 42.17.065, 42.17.080, 42.17.090, 42.17.100, and 42.17.565 are subject to the requirements of this section. The commission may determine that reports filed pursuant to this section also satisfy the requirements of RCW 42.17.100.

(5) The sponsor of independent expenditures supporting a candidate or opposing that candidate's opponent required to report under this section shall file with each required report an affidavit or declaration of the person responsible for making the independent expenditure that the expenditure was not made in cooperation, consultation, or concert with, or at the request or suggestion of, the candidate, the candidate's authorized committee, or the candidate's agent, or with the encouragement or approval of the candidate, the candidate's authorized committee, or the candidate's agent.

[2005 c 445 § 7; 2001 c 54 § 1.]

Notes:

Effective date -- 2001 c 54: "This act takes effect January 1, 2002." [2001 c 54 § 4.]